

August 28, 2018

Public Input Regarding Texas Sunset Advisory Commission
August 2018 Staff Report on Texas Board of Professional Geoscientist

I agree with the Sunset Commission staff report that State regulation of geoscience is unnecessary to protect the public. With sincere respect for my geologist/P.G. colleagues who perform very important work, thanks for allowing me this freedom of speech to express my personal opinion on this issueⁱ.

The Texas Board of Professional Geoscientists is a racket intended to protect business interests more than public health. I agree with the staff report that other state agencies provide more direct and robust evaluation of geoscience. TCEQ and RRC review environmental reports and substandard geological evaluation, if any, is identified and addressed through this regulatory review process.

Environmental site assessments performed for due diligence related to real estate transactions are governed by the the U.S. EPA All Appropriate Inquiry regulations which define the minimum qualifications of an *environmental professional* who can perform site assessments to be eligible for the liability defense sought.ⁱⁱ The environmental professional, who based on the EPA definition does not need to be a licensed geoscientist, merely certifies on the document that they meet the required credentials specified in the regulationⁱⁱⁱ.

As alluded to in the Sunset staff report, the consumers of direct geoscience and environmental services typically procure services through a Request for Qualifications (RFQ or RFP) process which may be a formal or informal process that requests resumes from prospective service providers and a list of project examples related to the specific scope of work being sought often with client references for those projects. This is a much more robust means of selecting a qualified service provider than just relying on possession of a state license since it is targeted to the specific scope of work. If an entity thinks an experienced geologist is the right person for the job then they can still hire an experienced geologist without it being state law.

In some ways the Texas geoscience licensing program could be viewed as actually posing a risk to the public. Licensed P.G.s in Texas (many of whom did not have to pass an exam to obtain the license) are also by virtue of possessing a P.G. license exempt from the exam normally required to obtain the TCEQ Corrective Action Project Manager (CAPM) license^{iv}. That's two State of Texas licenses with no exam.

Environmental assessments are multi-disciplinary with geology being only one aspect mixed with chemistry, toxicology, ecology, statistics etc^v. Some comments to the staff report expressed that the P.G. license was necessary to ensure that an individual was qualified to assess human health risks from exposure to toxic chemicals. These comments read like a job description for a toxicologist not a geologist. This is one of the fatal flaws of the program. The P.G. program broadly defines "geoscience" to include things that say a toxicologist might actually be qualified to do, and then narrowly defines the qualifications of who is allowed to perform that work to a geologist. This is the formula for using occupational licensing to control a market and could be viewed as actually presenting a risk to the public rather than providing protection. Given the fact that the program licenses thousands of oil and gas geologists who don't need the license and then omits many other science backgrounds who do work in the arena that is covered by the license, the Texas geoscience license program misses the mark.

One commenter to the staff report said “if the license holders agree to it then there is not a problem.” The geoscience board does have an impact on job and business opportunities for qualified professionals from other science backgrounds who work in the same fields as the geologists. Just because the license holders overwhelmingly agree to it doesn’t make it a legitimate function of state government.

The program might have been less illogical and anti-competitive if it had included a hydrogeology or environmental sciences category. If you exempt half the geoscientists in the state from the license requirement then you are not really regulating the practice of geoscience, you are regulating something else. What is it that is really being regulated and who practices it?

Texas needs a more cohesive and logical strategy for who needs to have a license to work in this state. We could do better and I appreciate the Sunset Advisory Commission staff for their efforts to shed some light and help us do better in this area. Let’s tear down unnecessary barriers to people earning a living in Texas doing work they are qualified to do. Thank you for the opportunity to participate.

ⁱ This is my personal opinion and does not represent the opinion of my employer.

ⁱⁱ <https://www.law.cornell.edu/cfr/text/40/312.10> EPA AAI see definitions *environmental professional*

ⁱⁱⁱ https://www.epa.gov/sites/production/files/2015-05/documents/aa1_reporting_factsheet.pdf The environmental professional must place the following statements in the document and sign the document: “[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.” “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

^{iv} TCEQ CAPM license requirements and exemptions 30 TAC 30.180 and 30 TAC 30.195

^v Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Environmental Scientists and Specialists, <https://www.bls.gov/ooh/life-physical-and-social-science/environmental-scientists-and-specialists.htm#tab-4> chemistry, biology, geology, physics, engineering.